IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.3006 OF 2006

Dr. Mohanbhai I. Patel & Ors. ..Petitioners.

Vs.

The State of Maharashtra & Ors. ..Respondents.

....

Mr. Shekhar Shetye with Mr. V.B. Amin i/b M/s. B. Amin & Co. for the Petitioners.

Ms. Mamta Sadh, AGP for Respondents 1 and 2.

...

CORAM: DR. D.Y. CHANDRACHUD, J.

8th December, 2006.

P.C. :

1. By an order dated 13th November, 2006, this Court while confirming the order of the Deputy Registrar, Co-operative Societies by which he appointed an Administrator in the exercise of powers conferred by Section 77A(1)(b) of the Maharashtra Co-operative Societies Act, 1960 issued directions for the appointment of a committee consisting of three members in place of the Administrator. The only ground on which the Administrator was appointed was the failure of the managing committee to execute a bond which is a mandatory requirement under Section 73-(1AB).

2. The Court has been moved in the present proceedings since the co-operative society (the Fourth Respondent) has filed a dispute before the Co-operative Court against the Third Respondent. The Third Respondent is the complainant at whose behest an order was passed by the Deputy Registrar appointing an Administrator. The Third Respondent had intervened before the Court in the earlier proceedings. The grievance of the Petitioners, who are members of the Co-operative Society is that the dispute filed by the co-operative society is to be heard by the Co-operative Court and there will be no effective representation of the co-operative society at the present stage until elections are held in pursuance of the order passed by this Court on 13th November, 2006. This Court had directed that elections be held within a period of two months from the issuance of a corrigendum by the Deputy Registrar. The corrigendum has been issued on 28th November, 2006 and the elections will be consequently completed before the end of January 2007. At this stage, the relief which has been sought is a direction to the Co-operative Court to defer the hearing of Dispute 320 of 2005. On 21st November, 2006 the Co-operative Court had listed the dispute for final hearing on 1st

December, 2006.

3. The relief that has been sought in the writ petition cannot be appropriately granted by this Court for more than one reason, in the present proceedings. For one thing, the disputant before the Co-operative Court is a co-operative society, the Fourth Respondent herein, and not the Petitioners who are only members of the society. Secondly, a Learned Single Judge of this Court (Hon'ble Mr. Justice D.G. Karnik) had on 10th July, 2006 issued directions calling upon the Co-operative Court to dispose of the dispute within a period of six months. Therefore, in the very nature of things, it would not be appropriate for this Court to issue any direction the effect thereof would be at divergence with the orders passed by My Learned Brother, Mr. Justice D.G. Karnik. Counsel appearing for the Petitioners states that an application has now in fact been moved before the Learned Single Judge by the Fourth Respondent. However, it has been stated that the Co-operative Court has placed the matter for final hearing today and in the absence of even a limited protection, the Dispute before the Co-operative Court may well be concluded without effective representation on behalf of the Co-operative Society. In order to

obviate the situation, it will be appropriate that this Court grants a limited protection, to be operative until 12th December, 2006 so as to enable the co-operative society to make an appropriate application before the Learned Single Judge. In the circumstances, the Learned Judge of the Co-operative Court is requested to defer the hearing of the Dispute until 12th December, 2006 so that in the meantime the application referred to hereinabove can be moved before the Learned Single Judge in Writ Petition 1446 of 2006. The Petition is accordingly disposed of.